

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1344

Introduced by Assembly Members Feuer and Alejo

February 18, 2011

An act to amend Sections 9255 and 9260 of the Elections Code, and to amend Sections 34457, 34458, 54954.2, 54956, and 54956.5 of, and to add Section 34458.5 to, to add Article 2.6 (commencing with Section 53243) to Chapter 2 of Part 1 of Division 2 of Title 5 of, and to add Chapter 10.1 (commencing with Section 3511.1) to Division 4 of Title 1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1344, as amended, Feuer. Local governance.

(1) Existing law requires a charter commission to submit, among other things, a city charter to the voters of a city at either a special election called for that purpose, at any established municipal election date, or at any established election date, provided that there are at least 88 days before the election. Existing law also authorizes the governing body of any city or city and county to, among other things, propose a charter and submit the proposal for the adoption to the voters at either a special election called for that purpose or at any established municipal election date or at any established election date, provided there are at least 88 days before the election.

This bill would require a city charter *or charter amendment*, whether submitted to the voters by a charter commission or the governing body of the city or city and county, to be submitted at the next established statewide *general* election date, provided there are at least 88 days before the election. This bill would also require a proposal to adopt a

charter, whether submitted to the voters by a charter commission or the legislative body of a city or city and county to include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including, but not limited to, whether the city council will, pursuant to an adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval.

(2) The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees. The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months.

This bill would, on and after January 1, 2012, additionally prohibit an employment contract for a local excluded employee, as defined, from including any clause that provides for an automatic renewal, an automatic compensation increase, as specified, or an automatic compensation increase in excess of a cost-of-living adjustment. The bill would also require the local agency, as defined, to complete a performance review of any excluded employee, as defined, before an increase in compensation in excess of a cost-of-living adjustment may be implemented for that individual. The bill would also specify that those records, procedures, and actions shall conform to the requirements of law, including, but not limited to, the Public Records Act and the Ralph M. Brown Act. By expanding the duties of local officials, this bill would impose a state-mandated local program.

The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, the procedures for the appointment and compensation of excluded employees are an issue of statewide concern and that, therefore, all counties and cities, including charter counties, charter cities, and charter cities and counties, would be subject to the provisions of the bill.

(3) Existing law sets forth the penalties for misuse of public resources or falsifying expense reporting, including, but not limited to, loss of reimbursement privileges, restitution to the local agency, civil penalties

for misuse of public resources, and prosecution for misuse of public resources, including imprisonment for 2, 3, or 4 years, and disqualification from holding office, as specified.

This bill would require an officer or employee of a local agency who is convicted of a crime involving an abuse of ~~their~~ *his or her* office or position, where the local agency for which the officer and employee was employed expends public funds for the legal defense of that officer or employee, to pay restitution to the local agency that expended those funds.

(4) The Ralph M. Brown Act requires the legislative body of a local agency to post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, in a location that is freely accessible to members of the public. The act also requires the presiding officer of the legislative body to deliver written notice to each member of the legislative body, and to each local newspaper of general circulation and radio or television station requesting notice in writing if the presiding officer of the legislative body calls a special meeting, or by telephone in the case of an emergency meeting.

This bill would require the legislative body, or the presiding officer of the legislative body, to provide notice of each meeting, including special meetings and emergency meetings, on the local agency's Internet Web site, if the local agency has one, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9255 of the Elections Code is amended
2 to read:
3 9255. (a) A charter *or charter amendment* proposed by a
4 charter commission, whether elected or appointed by a governing
5 body, for a city or city and county shall be submitted to the voters

1 at an established statewide *general* election date pursuant to
2 ~~Sections 1000 and 1001~~ *Section 1200*. A charter commission may
3 also submit a charter pursuant to Section 34455 of the Government
4 Code.

5 (b) The following city or city and county charter proposals shall
6 be submitted to the voters at ~~either a special election called for~~
7 ~~that purpose, at any established municipal election date, or at any~~
8 ~~an established statewide general election date~~, pursuant to Section
9 ~~1000~~ *1200*, provided that there are at least 88 days before the
10 election:

11 (1) An amendment or repeal of a charter proposed by the
12 governing body of a city or a city and county on its own motion.

13 (2) An amendment or repeal of a city charter proposed by a
14 petition signed by 15 percent of the registered voters of the city.

15 (3) An amendment or repeal of a city and county charter
16 proposed by a petition signed by 10 percent of the registered voters
17 of the city and county.

18 (4) A recodification of the charter proposed by the governing
19 body on its own motion, provided that the recodification does not,
20 in any manner, substantially change the provisions of the charter.

21 (c) Charter proposals by the governing body and charter
22 proposals by petition of the voters may be submitted at the same
23 election.

24 (d) The total number of registered voters of the city or city and
25 county shall be determined according to the county elections
26 official's last official report of registration to the Secretary of State
27 that was effective at the time the notice required pursuant to Section
28 9256 was given.

29 SEC. 2. Section 9260 of the Elections Code is amended to read:
30 9260. The petition shall be in substantially the following form:

31
32 Petition for Submission to Voters of Proposed Amendment to
33 the Charter of the City (or City and County) of ____

34
35 To the city council (or other legislative body) of the City (or
36 City and County) of ____:

37 We, the undersigned, registered and qualified voters of the State
38 of California, residents of the City (or City and County) of ____,
39 pursuant to Section 3 of Article XI of the California Constitution
40 and Chapter 2 (commencing with Section 34450) of Part 1 of

1 Division 2 of Title 4 of the Government Code, present to the city
2 council (or other legislative body) of the city (or city and county)
3 this petition and request that the following proposed amendment
4 to the charter of the city (or city and county) be submitted to the
5 registered and qualified voters of the city (or city and county) for
6 their adoption or rejection at the next statewide *general* election
7 date *pursuant to Section 1200*.

8 The proposed charter amendment reads as follows:

10
11 First. (setting forth the text of the amendment) _____ (etc.)

13 Signature	13 Printed Name	13 Residence	13 Date
14 _____	14 _____	14 _____	14 _____
15 _____	15 _____	15 _____	15 _____
16 _____	16 _____	16 _____	16 _____

17
18 SEC. 3. Chapter 10.1 (commencing with Section 3511.1) is
19 added to Division 4 of Title 1 of the Government Code, to read:

20
21 CHAPTER 10.1. EXCLUDED LOCAL PUBLIC EMPLOYEES

22
23 3511.1. As used in this chapter, the following definitions apply:

24 (a) “Compensation” means any of the following:

25 (1) Annual salary or stipend.

26 (2) Local agency payments to the filer’s deferred compensation
27 or defined benefit plans.

28 (3) Automobile and equipment allowances.

29 (4) Supplemental incentive and bonus payments.

30 (5) Local agency payments to the filer that are in excess of the
31 standard benefits that the local agency offers for all other
32 employees.

33 (b) “Cost-of-living” means the Consumer Price Index that
34 applies to a local agency, as calculated by the Department of
35 Finance using a formula developed by the Department of Industrial
36 Relations.

37 (c) “Excluded employee” means any person who is or will be
38 employed by, and report directly to, the legislative body of a local
39 agency and who is not subject to the Meyers-Milias-Brown Act
40 (Chapter 10 (commencing with Section 3500)), Chapter 5

(commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code. “Excluded employee” includes any person who performs governmental duties for a local agency pursuant to a contract with that local agency and any person who is considered an at-will employee.

(d) “Local agency” means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and an excluded employee shall not provide for any of the following:

(a) An automatic renewal of the contract.

(b) An automatic increase in compensation that exceeds a cost-of-living adjustment.

(c) An automatic increase in compensation that is linked to another contract, including an agreement entered into pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code.

(d) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.

3511.3. (a) Before a local agency may increase the compensation of an excluded employee, the local agency shall complete a performance review of the excluded employee.

(b) The records, procedures, and actions shall conform to the requirements of law, including, but not limited to, the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) This section shall not apply to cost-of-living adjustments to compensation.

SEC. 4. Section 34457 of the Government Code is amended to read:

1 34457. After the charter prepared by the charter commission
2 has been filed in the office of the clerk of the governing body of
3 the city or city and county pursuant to Section 34455, the proposed
4 charter shall be submitted to the voters of the city or city and
5 county at the next established statewide *general* election date
6 pursuant to ~~Sections 1000 and 1001~~ *Section 1200* of the Elections
7 Code, provided there are at least 95 days before the election.

8 SEC. 5. Section 34458 of the Government Code is amended
9 to read:

10 34458. As an alternative to the procedure provided for in
11 Sections 34450 to 34457, inclusive, the governing body of any
12 city or city and county, on its own motion may propose or cause
13 to be proposed, amend or cause to be amended, or repeal or cause
14 to be repealed, a charter, and may submit the proposal *for the*
15 *adoption, or amendment, or repeal thereof*, to the voters ~~for the~~
16 ~~adoption~~ at the next established statewide *general* election date
17 pursuant to ~~Sections 1000 or 1001~~ *Section 1200* of the Elections
18 Code provided there are at least 88 days before the election, ~~or~~
19 ~~may submit the amendments or repeal thereof, to the voters at~~
20 ~~either a special election called for that purpose or at any established~~
21 ~~municipal election date or at any established election date pursuant~~
22 ~~to Section 1000 of the Elections Code, provided there are at least~~
23 ~~88 days before the election.~~

24 SEC. 6. Section 34458.5 is added to the Government Code, to
25 read:

26 34458.5. A proposal to adopt *or amend* a charter, whether
27 submitted to the voters pursuant to Section 34457 or 34458, shall
28 include in the ballot description an enumeration of new city powers
29 as a result of the adoption of the charter, including, but not limited
30 to, whether the city council will, pursuant to an adopted charter,
31 have the power to raise its own compensation and the compensation
32 of other city officials without voter approval.

33 SEC. 7. Article 2.6 (commencing with Section 53243) is added
34 to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government
35 Code, to read:

36
37 Article 2.6. Abuse of Office
38

39 53243. If an officer or employee of a local agency, *as defined*
40 *in Section 54951*, is convicted of a crime involving an abuse of

1 ~~their~~ *his or her* office or position, and the local agency for which
2 the officer and employee was employed expended public funds
3 for the legal defense of that officer or employee, the officer or
4 employee shall pay restitution to the local agency that expended
5 those funds.

6 SEC. 8. Section 54954.2 of the Government Code is amended
7 to read:

8 54954.2. (a) (1) At least 72 hours before a regular meeting,
9 the legislative body of the local agency, or its designee, shall post
10 an agenda containing a brief general description of each item of
11 business to be transacted or discussed at the meeting, including
12 items to be discussed in closed session. A brief general description
13 of an item generally need not exceed 20 words. The agenda shall
14 specify the time and location of the regular meeting and shall be
15 posted in a location that is freely accessible to members of the
16 public and on the local agency's Internet Web site, if the local
17 agency has one. If requested, the agenda shall be made available
18 in appropriate alternative formats to persons with a disability, as
19 required by Section 202 of the Americans with Disabilities Act of
20 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
21 adopted in implementation thereof. The agenda shall include
22 information regarding how, to whom, and when a request for
23 disability related modification or accommodation, including
24 auxiliary aids or services may be made by a person with a disability
25 who requires a modification or accommodation in order to
26 participate in the public meeting.

27 (2) No action or discussion shall be undertaken on any item not
28 appearing on the posted agenda, except that members of a
29 legislative body or its staff may briefly respond to statements made
30 or questions posed by persons exercising their public testimony
31 rights under Section 54954.3. In addition, on their own initiative
32 or in response to questions posed by the public, a member of a
33 legislative body or its staff may ask a question for clarification,
34 make a brief announcement, or make a brief report on his or her
35 own activities. Furthermore, a member of a legislative body, or
36 the body itself, subject to rules or procedures of the legislative
37 body, may provide a reference to staff or other resources for factual
38 information, request staff to report back to the body at a subsequent
39 meeting concerning any matter, or take action to direct staff to
40 place a matter of business on a future agenda.

1 (b) Notwithstanding subdivision (a), the legislative body may
2 take action on items of business not appearing on the posted agenda
3 under any of the conditions stated below. Prior to discussing any
4 item pursuant to this subdivision, the legislative body shall publicly
5 identify the item.

6 (1) Upon a determination by a majority vote of the legislative
7 body that an emergency situation exists, as defined in Section
8 54956.5.

9 (2) Upon a determination by a two-thirds vote of the members
10 of the legislative body present at the meeting, or, if less than
11 two-thirds of the members are present, a unanimous vote of those
12 members present, that there is a need to take immediate action and
13 that the need for action came to the attention of the local agency
14 subsequent to the agenda being posted as specified in subdivision
15 (a).

16 (3) The item was posted pursuant to subdivision (a) for a prior
17 meeting of the legislative body occurring not more than five
18 calendar days prior to the date action is taken on the item, and at
19 the prior meeting the item was continued to the meeting at which
20 action is being taken.

21 (c) This section is necessary to implement and reasonably within
22 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
23 I of the California Constitution.

24 SEC. 9. Section 54956 of the Government Code is amended
25 to read:

26 54956. A special meeting may be called at any time by the
27 presiding officer of the legislative body of a local agency, or by a
28 majority of the members of the legislative body, by delivering
29 written notice to each member of the legislative body and to each
30 local newspaper of general circulation and radio or television
31 station requesting notice in writing and posting a notice on the
32 local agency's Internet Web site, if the local agency has one. The
33 notice shall be delivered personally or by any other means and
34 shall be received at least 24 hours before the time of the meeting
35 as specified in the notice. The call and notice shall specify the time
36 and place of the special meeting and the business to be transacted
37 or discussed. No other business shall be considered at these
38 meetings by the legislative body. The written notice may be
39 dispensed with as to any member who at or prior to the time the
40 meeting convenes files with the clerk or secretary of the legislative

body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

SEC. 10. Section 54956.5 of the Government Code is amended to read:

54956.5. (a) For purposes of this section, “emergency situation” means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. The notice shall also be posted on the local agency’s Internet Web site, if the local agency has

one, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. In the event that telephone or Internet services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

SEC. 11. The Legislature finds and declares that the fiscal integrity and stability of local governmental agencies in this state, including charter cities and charter counties, have a direct impact on the long-term well-being of all the residents of this state. The likelihood of businesses locating to or staying in the state is affected by the perception of a functioning, transparent, and practical governmental structure in the local governmental bodies in California. Therefore, the Legislature finds and declares that to ensure the statewide integrity of local government, the procedures for the appointment and compensation of excluded employees are an issue of statewide concern. Therefore, Section 3 of this act shall apply to all counties and cities, including charter counties, charter cities, and charter cities and counties.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
 2 4 of Title 2 of the Government Code.

3

4

5 **CORRECTIONS:**

6 **Title—Line 2.**

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